IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 32222 of 2006(J)

PETITIONER:

DR.ABDUL RASHEED, AGED 50 YEARS,
S/O.ALIYAR KUNJU, `CITADEL',
GOLF LINKS ROAD, KAWADIAR, TRIVANDRUM.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS:

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1. THE SECRETARY, NEDUMANGAD MUNICIPALITY,
NEDUMANGAD, TRIVANDRUM DISTRICT.

2. SECRETARY TO GOVERNMENT, LOCAL SELF
GOVERNMENT DEPT., SECRETARIAT, TRIVANDRUM.

R1 BY ADV. SRI.P.RAMAKRISHNAN
R2 BY GOVT.PLEADER SMT.T.B.RAMANI.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.32222 OF 2006

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DATED THIS THE 9th MARCH, 2007

J U D G M E N T

The petitioner who is a resident of Nedumangad Municipality was granted a permit by the Municipality for making constructions by way of alterations inside Summer Shade Auditorium belonging to him. Ext.P1 is copy of the permit and Ext.P2 is copy of the approved plan. He complains that while he was carrying on with the works on the strength of Exts.P1 and P2, the Municipality issued him Ext.P3 notice purportedly under Section 408(1) of the Kerala Municipality Act to stop construction of the main entrance steps of the building. To Ext.P3 he submitted Ext.P4 explanations contending that there is no violation of any building rules and that whatever he has done does not contravene any order or permission which was granted to him by the Municipality. No decision was taken by the Municipality upon Ext.P4. But on 25.11.2006 the petitioner received another notice from the Municipality. Ext.P5 is copy of the said notice. He points out that Ext.P5 refers to Order No.31749/E1/06/LSGD dated 9.8.2006 and complains that pursuant to Ext.P5, the new steps put up by him

towards the ground floor of the building in substitution of the old steps were completely demolished by the Municipality. The petitioner submits that thereafter he has not been able to effect any construction at all in the building. Raising various grounds the petitioner prays that Exts.P3 and P5 be quashed and he be permitted to complete the constructions strictly in terms of the plan and permit which were issued to him by the Municipality.

2. The Municipality has filed a counter affidavit denying the allegations and refuting the grounds. Ext.R1(a) is copy of the request of the petitioner dated 31.10.06 seeking verification of the fire drawings and civil plans for obtaining no-objection certificate from the Fire Force. It is submitted that Ext.P2 had been submitted by him along with Ext.R1(a). The Municipality concedes that under Ext.P1 the petitioner had been granted permission for making internal alterations of the building subject to the conditions prescribed therein. But the petitioner in gross violation of Ext.P1 made external alterations to the building by carrying out constructions of the eastern side. Ext.P3 has therefore been issued on the basis of the inspection carried out by the Building Inspector on 20.11.06. The counter affidavit further submits that the steps were demolished since the petitioner continued with the

construction of steps in spite of Ext.P3 stop memo. The order of the Municipality was based on Government letter No. No.31749/E1/06/LSGD dated 25.11.2006. The Municipal Council also resolved vide its resolution dated 29.11.2006 to demolish unauthorised constructions in respect of which the Municipality had not sanctioned plan. Permit was granted only for making internal alterations. The Municipality was justified in taking action under Section 406 of the Act since constructions were carried out beyond the sanction.

3. The Standing Counsel for the Municipality has produced copies of the resolution and the Government letter respectively as Annexure II and Annexure I. Annexure II resolution dated 29.11.2006 incorporates the decision of the Municipal Council to demolish the unauthorised constructions put up by the petitioner. But a reading of Annexure II will show that the reason which weighed with the Municipal Council is that the stop memo which had been issued by the Municipality on the basis of the Government letter Annexure-I had been violated. Annexure-I Government letter is dated 25.11.2006. Under this letter, apart from directing the Municipality to take immediate steps for stoppage of the constructions, the Municipality is asked to explain as to why occupancy change has been permitted

under the guise of renovation.

4. The petitioner has filed a reply affidavit along with which additional documents have been produced. Exts.P6, P6(a), P6(b) and P6(c) are copies of the plan forwarded by the Secretary, Nedumangad Municipality to the Director of Fire Force and Ext.P7 is the No-Objection Certificate issued to the petitioner by the Director (Technical), Fire and Rescue Services.

5. Heard Sri.K.Ramakumar, counsel for the petitioner, Sri.P.Ramakrishnan, Standing Counsel for the Municipality and Smt.T.B.Ramani, Government Pleader.

6. Sri.Ramakumar would submit that Ext.P4 objections which had been submitted by the petitioner regarding the alleged illegal construction had never been considered by the Municipality at all. What the petitioner had done was to substitute the existing steps to the ground floor of the building by new steps which were being constructed further away from the road margin. There was no question of any rule violation. The learned counsel submitted that in any event the action of the Municipality based on a Government decision obviously taken on the basis of a complaint by somebody who was having considerable clout with the political leadership was patently

illegal since the petitioner, the affected party had never been heard by the Government before the order was passed.

7. Smt.T.B.Ramani, Government Pleader referred to Section 405 of the Kerala Municipality Act and Rule 3(c) and Rule 18(5) of the Kerala Municipality Building Rules. According to her, it was well within the powers of the Government under Rule 18(5) to take the decision.

8. It is common ground that the Padikkettu or steps which were subject matter of the demolition order were not covered by Exts.P1 and P2. But, at the same time, in the light of the explanation offered by the petitioner through Ext.P4, perhaps the issue could have been regularised at the level of the Municipality itself. But the Municipality became obliged to demolish the steps in view of the Government Order passed under Rule 18(5) of the Kerala Municipality Building Rules. The above order has been passed obviously without hearing the petitioner. I am therefore inclined to quash that order on the ground that the same has been passed in violation of principles of natural justice.

9. The Writ Petition accordingly will stand disposed of issuing the following directions:-

The order passed by the Government under Rule 18 (5) of the Kerala Municipality Building Rules directing

demolition of the constructions put up by the petitioner (the decision on the basis of which Annexure-I letter was issued to the Municipality by the Government) is quashed and the Government is directed to take a fresh decision. Decision as directed above will be taken by the Government on the basis of the report to be submitted by the Municipality. The report will be so submitted by the Municipality after conducting a further inspection of the petitioner's building. The report shall contain details as to what all steps are to be taken by the petitioner so that the proposed constructions will conform to the Kerala Municipality Building Rules. Necessary inspection will be conducted by the Municipality with notice to the petitioner. Report as directed above will be placed by the Municipality before the Government within two months of receiving copy of this judgment. The Government will, on receiving the report from the Municipality, issue notice to the petitioner and anybody else who is concerned in the matter and take a fresh decision as directed above. Fresh

decision as directed above will be taken by the Government within three months of receiving the report from the Municipality.

(PIUS C. KURIAKOSE, JUDGE)

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